



September 21, 2018

Texas Commission on Environmental Quality  
Air Quality Division  
Implementation grants Section, MC-204  
P.O. Box 13087  
Austin, TX 78711-3087  
ATTN: VW Settlement

Texas Commission on Environmental Quality (TCEQ):

I am writing on behalf of the Port of Houston Authority (PHA) about the funding from the Volkswagen settlement. As discussions continue, the PHA would like to comment on the published plan for management and distribution of VW settlement funds being formulated by TCEQ. Detailed comments are found in the following pages but a summary of the comments are provided below:

- PHA encourages TCEQ to maximize the cost coverage to 80%, as allowed in the VW settlement consent decree, for the Electric Forklifts and Port Cargo Handling Equipment mitigation action category. Since electric powered equipment is the only option for this category, and given the costs for electric powered equipment are much higher than the diesel powered equipment, implementation will be more difficult at the current 60% coverage.
- PHA recommends that TCEQ delete the restriction in the Electric Forklifts and Port Cargo Handling Equipment mitigation action category that allows TCEQ to limit eligibility to equipment powered by Tier 0, 1, or 2 diesel engines. Since a majority of PHA owned terminal tractors are Tier 3 and on-road diesel engine powered terminal tractors, an opportunity to reduce significant emissions would be lost.
- PHA requests that the funding from the Electric Forklifts and Port Cargo Handling Equipment Mitigation Action category be only used for seaports. The term "Port" can be defined from other definitions found in the Trust Agreement and because of the general meaning of the word "port".
- While PHA understands the inclusion of San Antonio, El Paso, Beaumont-Port Arthur, Houston-Galveston-Brazoria, and Dallas-Fort Worth areas as priority areas, we propose that the funding allocation between the areas be based on the number of affected vehicles and/or the severity of ozone in each of the priority areas.

I thank you for your time and look forward to an opportunity to partner with you on future projects. If you have any additional questions please contact me or Bridget Kramer at

Sincerely,

A handwritten signature in black ink, appearing to read 'RNB' followed by a stylized flourish.

Rich Byrnes  
Chief Infrastructure Officer  
Port Houston  
111 East Loop North  
Houston, Texas 77029

**CC: Steven Schar**  
**Office of the Governor**  
**P.O. Box 12428**  
**Austin, Texas 78711-2428**

### **Comment #1**

Eligible Action #7. Electric Forklifts and Port Cargo Handling Equipment in Appendix C contains the following proposed funding restriction:

*A maximum of 60% of the eligible costs for each eligible mitigation action may be funded under this initiative.*

PHA recommend that the 60% maximum be increased to 80% for the following reasons:

- Electric terminal tractors are expensive. Depending on the manufacturer and the battery capacity, an electric terminal tractor can cost anywhere between \$245,000 and \$330,000. This is 2.2 to 3 times higher than the current cost of a diesel terminal tractor. When applying the maximum funding of 60% the benefit ranges between \$10,000 below to \$20,000 above the cost of a diesel version. This is important because PHA terminal tractors are well maintained and last a long time; therefore, there is less of an opportunity to purchase a cleaner fleet without an incentive. When the VW funding only reduces the price of an electric terminal tractor to around the same price of the diesel version, as with the current recommended plan, then there is little to no incentive to replace diesel terminal tractors (an established technology) with electric terminal tractors (a nascent technology).
- When the funding level is at 80%, this will bring the cost of an electric terminal tractor from about 45% to 60% less than the diesel version. This is clearly an incentive that could affect purchasing behavior for PHA.

### **Comment #2**

Eligible Action #7. Electric Forklifts and Port Cargo Handling Equipment in Appendix C contains the following proposed restriction:

*e. The TCEQ may limit eligible forklifts and port cargo handling equipment to those with Tier 0, 1, or 2 diesel engines, or spark-ignition engines that are uncertified or certified to 3.0 g/bhp-hr of nitrogen oxides (NOX) or greater.*

PHA recommends that TCEQ delete this restriction for the following reasons:

- This restriction is not in the Forklifts and Port Cargo Handling Equipment mitigation action section in Appendix D-2 of the federal consent decree.
  - This restriction is based on language that is only found in the Airport Ground Support Equipment mitigation action section in Appendix D-2 of the federal consent decree which restricts eligibility to airport ground support equipment powered by Tier 0, Tier 1, and Tier 2 diesel powered engines and uncertified, or certified to 3 g/bhp-hr or higher, spark ignition engines.

- The language is modified for Texas VW Mitigation Plan in the Electric Forklifts and Port Cargo Handling Equipment section by saying that TCEQ “may limit” eligibility to equipment with engines with these standards.

PHA recommends that TCEQ stay consistent with the federal consent decree. The federal consent decree includes this restriction in the Airport Ground Support Equipment section and not in the Forklifts and Port Cargo Handling Equipment section.

- If TCEQ implements this restriction then the majority of the PHA owned terminal tractor fleet would not be eligible for the VW mitigation funds. PHA owns and operates 72 terminal tractors and only 3% are Tier 0 and 7% are Tier 2. The rest of the fleet have engines that are Tier 3 (46%), pre-2007 onroad engines (43%), and Tier 4 (1%). Not being able to use VW funds for the Tier 3 and onroad engine powered terminal tractors would be a lost opportunity to reduce a significant amount of emissions.

### **Comment #3**

Eligible Action #6. Electric Forklifts and Port Cargo Handling Equipment in the Priority Area – Eligible Mitigation Actions section of the plan contains the following proposed “definition” for port equipment:

*While this category refers to port equipment, these types of equipment are used at many types of facilities to move material, cargo, containers, and trailers around and near the facility. The Trust Agreement does not specify what constitutes a port or establish any sort of location restriction for use of this equipment. Therefore, the TCEQ will consider the eligibility criteria to refer to the type of equipment, rather than the location of use. The TCEQ generally intends to take a broad approach in determining where this equipment may operate. However, in some cases, priorities may be set for funding equipment used at a more limited number of facilities, such as seaports, intermodal rail yards, and/or inland ports.*

PHA recommend that funds from the Electric Forklifts and Port Cargo Handling Equipment category be only used for seaports for the following reasons:

- While it is true that the Trust Agreement does not explicitly specify define “port”, it is obvious from other definitions in the Trust Agreement what a “port” is not.
  - The Trust Agreement defines drayage trucks as “trucks hauling cargo to and from ports and intermodal rail yards”. Furthermore, the Trust Agreement defines an intermodal yard as a “rail facility in which cargo is transferred from drayage truck to train or vice-versa”. This clearly indicates that the Trust Agreement does not consider an intermodal yard as a “port” and by

default would leave “port” to be defined as a seaport. Furthermore, by extension, an inland port that has no waterway connection to the open ocean is the same as an intermodal yard and should not be eligible.

- A definition of “port” in the Merriam-Webster dictionary is a “harbor town or city where ships may take on or discharge cargo” and in the Oxford dictionary a “port” is a “town or city with a harbor or access to navigable water where ships load or unload”. This clearly indicates that the use of “port” in the Trust Agreement, and in general usage, would mean a seaport.

Also PHA finds that the Trust Agreement does “*establish any sort of location restriction for use of this equipment.*” There is a location restriction found within the definition of “Port Cargo Handling Equipment” as follows:

*“Port Cargo Handling Equipment” shall mean rubber-tired gantry cranes, straddle carriers, shuttle carriers, and terminal tractors, including yard hostlers and yard tractors that operate within ports.*

The phrase “*that operate within ports*” is clearly as location restriction that would preclude TCEQ from funding cargo handling equipment under this mitigation action for locations that are not within a seaport.

#### **Comment #4**

The **Priority Areas Allocation (up to 81%)** section of the plan contains the following:

- *The TCEQ proposes to initially allocate the remaining 81% of the total funds (approximately \$170 million) among the five Priority Areas identified in Appendix A. Funding allocated to each of these areas is listed on Table 1, Funding Allocation by Area, below. The allocation is weighted toward three Priority Areas where air quality is closest to the 2015 ozone NAAQS, with two-thirds of the Priority Area funds allocated by population among the San Antonio, El Paso, and Beaumont-Port Arthur Areas. The remaining third is divided, based on population, between Houston-Galveston-Brazoria and Dallas-Fort Worth Areas.*

While PHA understands the inclusion of San Antonio, El Paso, Beaumont-Port Arthur, Houston-Galveston-Brazoria, and Dallas-Fort Worth areas as priority areas, it recommends that the funding allocation be based on the number of affected vehicles and/or the severity of ozone in each of the priority areas for the following reasons:

- Providing an arbitrarily set amount of two-thirds of the funding toward the areas that are closest to the 2015 ozone NAAQs is not consistent with statements made by TCEQ in the mitigation plan as follows:
  - *A primary purpose of the Trust Agreement is to mitigate NOX emissions especially in regards to impacted communities. Those communities most*

*impacted are those that likely had additional emissions from the vehicles under the consent decree that are measuring levels at or above the National Ambient Air Quality Standard for ozone.*

- *A description of how the state will consider the potential beneficial impact of the selected eligible mitigation actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction.*
- *The primary goal for use of the funds will be to reduce NOX emissions in those areas with the potential to be most impacted by NOX emissions and in particular areas of the state designated nonattainment for National Ambient Air Quality Standards (NAAQS) for ground level ozone and in other areas monitoring ground-level ozone levels near the NAAQS for ozone. These "Priority Areas" are impacted by a disproportionate share of the air pollution burden within the regional and local jurisdictions. The Priority Areas are listed in Table A.1 and shown on Figure A.1 in Appendix A.*

The phrases "*the communities most impacted are those that likely had additional emissions from the vehicles*" and "*areas that bear a disproportionate share of the air pollution burden*" indicate that there should be a focus on the areas that are most affected by the non-compliant vehicles and on areas that bear a disproportionate share of air pollution. As such, the funding allocation should reflect this by allocating funds to the priority areas based on the number of affected vehicles in each priority area and/or the severity of ozone in each of the priority area.